

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
PAIGE A. THOMPSON,  
Defendant.

NO. CR19-159-RSL

GOVERNMENT’S RESPONSE TO  
DEFENDANT’S MOTION *IN LIMINE* #1 TO  
EXCLUDE USE OF THE TERMS “HACK”  
AND “CRYPTOJACKING”

The United States of America, by and through Nicholas W. Brown, United States Attorney for the Western District of Washington, and Andrew C. Friedman, Jessica M. Manca, and Tania M. Culbertson, Assistant United States Attorneys for said District, hereby submits its response to Defendant Paige A. Thompson’s motion *in limine* in the above-captioned case, under local criminal rule 23.2.

The Court should reject Thompson’s request to bar the government from using the terms “hacking” and “cryptojacking” (in all their linguistic variations) at trial. The defense contends that its request is reasonable because it encompasses “only two terms.” Dkt. No. 272 at 2. But this argument elides the fact that “hacking” and “cryptojacking” are two of the central terms describing Thompson’s fraud; in fact, they are terms Thompson herself repeatedly used to describe her actions. Prohibiting these terms at trial

1 would hamper the government’s ability to present evidence to the jury of Thompson’s  
 2 own statements. And such a prohibition is unnecessary given that the terms are not  
 3 unfairly prejudicial.

4 The Court also should decline the defense’s invitation to instruct the jury that “the  
 5 term ‘hack’ is a neutral term in the cybersecurity industry and can refer to both legal and  
 6 illegal behavior.” Dkt. No. 272 at 4–5. The parties intend to present evidence to the jury  
 7 about “black hat hacking,” “grey hat hacking,” and “white hat hacking,” *see*  
 8 Government’s Redacted Trial Brief (Dkt. No. 267) at 20–21; Defendant’s Trial Brief  
 9 (Dkt. No. 277) at 4, and the jury then can form its own conclusions about which category  
 10 Thompson’s actions in this case fall into. But the term “hacking,” standing alone, is a  
 11 summary way of describing an aspect of the fraud alleged in the indictment and is a  
 12 commonly accepted term frequently used by courts in Computer Fraud and Abuse Act  
 13 (CFAA) cases. *See, e.g., United States v. Nosal*, 676 F.3d 854, 857 (9th Cir. 2012) (en  
 14 banc) (describing the CFAA as “an anti-hacking statute”). Thompson’s requested  
 15 instruction is therefore not necessary and has the potential to confuse—rather than  
 16 clarify—the issues for the jury.

## 17 DISCUSSION

### 18 **A. The term “hacking” is necessary, accurate, and not unfairly prejudicial**

19 The terms “hack,” “hacker,” and “hacking” permeate this case—to a large degree  
 20 because Thompson herself repeatedly used those terms to describe what she was doing.  
 21 For example, in a text message Thompson sent from her iPhone in March 2019, she  
 22 wrote:

23 //

24 //

+12066029923

I have about 5,000 a month coming in now but its all in ethereum and i have to find a safe way to convert

Status: Sent

Delivered: 3/24/2019 9:01:50 PM(UTC-7)

3/24/2019 9:01:50 PM(UTC-7)

Source Info:  
erratic's iPhone/var/mobile/Library/SMS/sms.db : 0x86998 (Table: message, chat, Size: 1048576 bytes)

+12066029923

Because im hacking aws accounts to get it using ec2 gpu miners

Status: Sent

Delivered: 3/24/2019 9:02:36 PM(UTC-7)

3/24/2019 9:02:36 PM(UTC-7)

Source Info:  
erratic's iPhone/var/mobile/Library/SMS/sms.db : 0x8671E (Table: message, chat, Size: 1048576 bytes)

She followed this up by sending a screenshot of a computer screen showing her Ethereum-wallet activity and explaining:

+12066029923

I cant make this stuff up though incase youre wondering what 5 grand a month in hacker money looks like :)

Status: Sent

Delivered: 3/24/2019 9:13:48 PM(UTC-7)

3/24/2019 9:13:48 PM(UTC-7)

Source Info:  
erratic's iPhone/var/mobile/Library/SMS/sms.db : 0x88BBD (Table: message, chat, Size: 1048576 bytes)

And in a direct message she sent via Twitter in June 2019, Thompson stated:

**ERRATIC**

@0xA3A97B6C

I spend most of my time baiting skids, using their names, collecting and using their dox and hacking shit my life was over 3 years ago

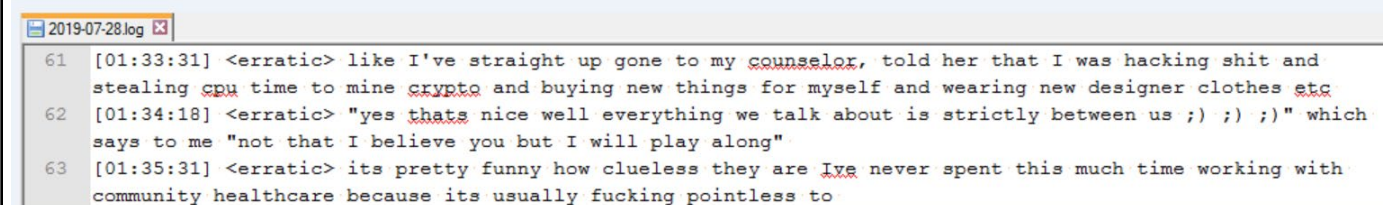
In another Twitter message from June 2019, Thompson wrote:

```
"created_at": "Sun Jun 16 08:16:54 +0000 2019",
"id": 1140171379049766912,
"id_str": "1140171379049766912",
"full_text": "@four0ctets And then i hack into their ec2 instances, assume-role their iam instance
profiles, take over thr account and corrupt SSM, deploying my backdoor, mirror their s3 buckets, and
convert any snapshots i want to volumes and mirror the volumes i want via storage gateway",
```

The following month, Thompson wrote:

```
"id" : 1146822579618926596,
"text" : "Just living with friend and hacking ec2 instances and getting access to some aws accounts and using them to mine crypto :(",
"sender_id" : 1136835740380192768,
"recipient_id" : 3004269184,
"created_at" : "Thu Jul 04 16:46:24 +0000 2019",
```

And Thompson used an Internet Relay Chat (IRC) protocol to send these messages:



```
2019-07-28.log
61 [01:33:31] <erratic> like I've straight up gone to my counselor, told her that I was hacking shit and
stealing cpu time to mine crypto and buying new things for myself and wearing new designer clothes etc
62 [01:34:18] <erratic> "yes thats nice well everything we talk about is strictly between us ;) ;)" which
says to me "not that I believe you but I will play along"
63 [01:35:31] <erratic> its pretty funny how clueless they are I've never spent this much time working with
community healthcare because its usually fucking pointless to
```

Given Thompson's repeated use of the words "hack," "hacker," and "hacking" to describe what she was doing, the defense's suggestion that the government must insert the words "illegal" or "black hat" into each of Thompson's own statements is problematic because it alters the words she actually wrote. Thompson has not provided any authority that requires the Court to alter her own statements, and the government is not aware of any. In addition, inserting the words "illegal" or "black hat" into Thompson's own statements would not have the salutary effect the defense no doubt seeks.

Nor does it make sense in this context to instruct the jury that the term "hacking" can be understood to be neutral when that is apparently not how Thompson was using the term in her own communications. Such an instruction would confuse and mislead the jury, *see* Fed. R. Evid. 403, who—after they are presented with all the evidence at trial—will make their own determinations about what Thompson was doing when she hacked into AWS customers' cloud servers. The jury will make that determination after hearing expert testimony from both sides about what constitutes "black hat hacking," "grey hat

hacking,” and “white hat hacking.” *See* Dkt. No. 267 at 20–21; Dkt. No. 277 at 4 (describing the anticipated testimony of experts on this topic). Requiring the government to further qualify every use of the term “hacking” at trial would be unwieldy and confusing and is unnecessary in this case.

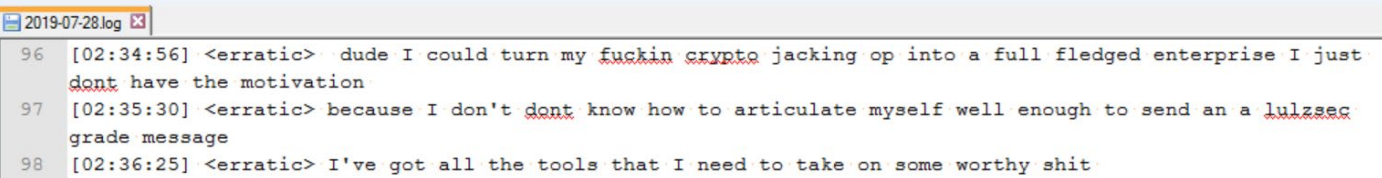
Finally, the term “hacking” is not unfairly prejudicial, and the defense has cited no case concluding that it is (nor has the government been able to identify any). To the contrary, the term “hacking” is commonly used as a summary way to describe an intentional intrusion onto someone else’s computer. *See, e.g., Van Buren v. United States*, 141 S. Ct. 1648, 1658 (2021); *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1196 (9th Cir. 2022); *Nosal*, 676 F.3d at 857. Whether Thompson’s intrusions here were made in good faith or in bad faith is for the jury to decide, but the use of the term “hacking” to describe what she did does not have “an undue tendency to suggest a decision on an improper basis such as emotion or character rather than evidence presented on the crime charged.” *United States v. Joetzki*, 952 F.2d 1090, 1094 (9th Cir. 1991) (citing Fed. R. Evid. 403). Accordingly, the Court should deny the defense’s request for a vague instruction on how the term “hacking” is understood in the cybersecurity industry and it should not otherwise qualify the government’s use of the term at trial.

**B. The term “cryptojacking” is necessary, accurate, and not unfairly prejudicial, and the defense’s suggested replacement for the term does not accurately describe what Thompson did**

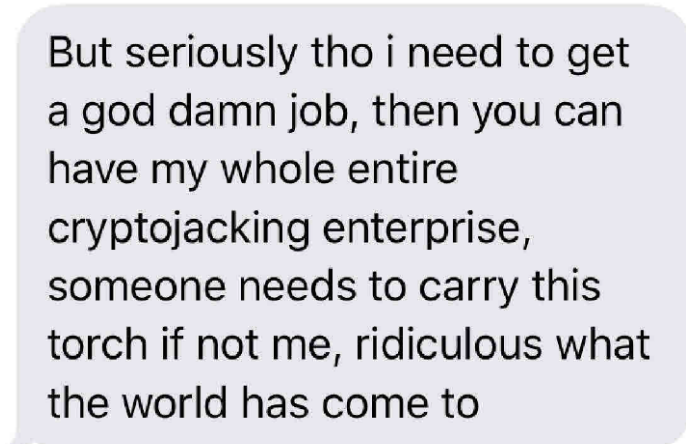
Just as with the term “hacking,” Thompson’s own statements dictate the use of the term “cryptojacking” at trial. Thompson repeatedly used the term to describe her illegal cryptocurrency-mining scheme. For example, in a message Thompson posted to Slack in July 2019, she wrote about her “cryptojacking enterprise”:

[2019-07-19 22:27:59] [<Slack API Tester> bot] whatever I'll be employed again soon and if I had a partner I could have them take over my cryptojacking enterprise and be a stay at home  
 [2019-07-19 22:28:07] [<Slack API Tester> bot] haha  
 [2019-07-19 22:28:09] [<Slack API Tester> bot] will give me more motivation to work harder  
 [2019-07-19 22:28:13] [<Slack API Tester> bot] stay-at-home waifu haxor  
 [2019-07-19 22:28:26] [<Slack API Tester> bot] exactly!  
 [2019-07-19 22:28:30] [<Slack API Tester> bot] now you're speaking my language  
 [2019-07-19 22:29:27] [<Slack API Tester> bot] speaking of which I need to figure out a way to automate my shit 100%

1 She also talked about turning her “crypto jacking op into a full fledged enterprise” in an  
2 IRC chat:

3   
4 96 [02:34:56] <erratic> dude I could turn my fuckin crypto jacking op into a full fledged enterprise I just  
5 97 [02:35:30] <erratic> because I don't dont know how to articulate myself well enough to send an a lulzsec  
6 98 [02:36:25] <erratic> I've got all the tools that I need to take on some worthy shit

7 And in a July 2019 text-message exchange with a friend, Thompson sent a GitHub link  
8 for the computer script she used to install cryptocurrency-mining malware on victim  
9 servers, stating:

10   
11 But seriously tho i need to get  
12 a god damn job, then you can  
13 have my whole entire  
14 cryptojacking enterprise,  
15 someone needs to carry this  
16 torch if not me, ridiculous what  
17 the world has come to

18 The defense’s request to replace the term “cryptojacking” with “cryptomining” or  
19 “cryptocurrency mining” is thus unworkable for the same reason as its request to modify  
20 the term “hacking.” Thompson herself used the term and the government will be  
21 presenting her statements as evidence. Thompson has not provided any authority that  
22 would require the Court to alter Thompson’s use of the name of the crime of which she is  
23 accused in her own statements, and the government is not aware of any such authority.  
24 To the extent the term may be seen as “pejorative” or “suggestive” as the defense  
25 suggests, Dkt. No. 272 at 2, it is not unfairly prejudicial under Fed. R. Evid. 403, and it is  
26 also the term Thompson chose to describe what she was doing.

27 The defense argues that “cryptojacking” is problematic because it encompasses the  
28 word “jacking,” which it defines as to “take (something) illicitly; steal.” Dkt. No. 272 at



3. But that is what Thompson is accused of doing—the evidence shows that she stole the computing power of others to generate cryptocurrency for herself. She also stole other peoples’ data; in her words, she “jacked” it:

**ERRATIC**  
@0xA3A97B6C



Jacked [gist.github.com/paigeadelethom...](https://gist.github.com/paigeadelethom...) all avail s3  
buckets, certs

Jun 17, 2019, 11:49 PM

Moreover, even when the evidence at issue is testimony of other witnesses, rather than Thompson’s own statements, requiring the government to describe Thompson’s cryptojacking as “cryptomining” would be akin to requiring the government to describe a bank robbery as a “withdrawal of funds.” To be sure, the term “robbery” may imply a wrongful act, but it is not unfairly prejudicial under Rule 403 where it necessarily and accurately describes the nature of the crime. The same is true here.

“Cryptomining” or “cryptocurrency mining” are not equally apt terms for describing cryptojacking. They do not convey the use of someone else’s computing power to mine cryptocurrency for personal gain, which is what Thompson is accused of doing here. The importance of using an accurate term to describe Thompson’s actions—even a term that, like “robbery,” suggests the wrongfulness of those actions—is not substantially outweighed by the danger of unfair prejudice. *Cf. United States v. Bailleaux*, 685 F.2d 1105, 1111 (9th Cir. 1985) (“All evidence which tends to establish the guilt of a defendant is, in one sense, prejudicial to that defendant, but that does not mean that such evidence should be excluded.”).

Certainly, when the context calls for it, the government will also use the terms “cryptomining” or “cryptocurrency mining” at trial. For example, the government intends to present testimony to the jury explaining what cryptocurrency is and how it is mined. That testimony will be necessary so that the jury can understand what

1 | cryptojacking is: the use of stolen computing power to mine cryptocurrency. In that  
 2 | respect, the testimony at trial will resemble the government’s presentation of evidence to  
 3 | the grand jury, during which FBI Special Agent Joel Martini used (contrary to the  
 4 | defense’s representations in its motion) not just the terms “cryptomining” and  
 5 | “cryptocurrency mining,” but also the term “cryptojacking.” *See, e.g.*, Dkt. No. 273, Ex.  
 6 | B (sealed) at 15:7. But where the context calls for the government to give an accurate  
 7 | description of what Thompson stands accused of doing—and, particularly, where the  
 8 | government is showing the jury Thompson’s own descriptions of what she did—the  
 9 | Court should permit use of the term “cryptojacking” at trial.

# 10 | I. CONCLUSION

11 | For all the above-stated reasons, the Court should deny Thompson’s motion *in*  
 12 | *limine* to modify or exclude the terms “hack” and “cryptojacking” and should not give  
 13 | Thompson’s requested jury instruction about hacking.

14 | Dated: May 30, 2022

15 | Respectfully submitted,  
 16 | NICHOLAS W. BROWN  
 17 | United States Attorney

18 |  
 19 | s/ Andrew C. Friedman  
 20 | s/ Jessica M. Manca  
 21 | s/ Tania M. Culbertson  
 22 | ANDREW C. FRIEDMAN  
 23 | JESSICA M. MANCA  
 24 | TANIA M. CULBERTSON  
 25 | Assistant United States Attorneys  
 26 | 700 Stewart Street, Suite 5220  
 27 | Seattle, WA 98101  
 28 | Phone: (206) 553-7970  
 Fax: (206) 553-0882  
 Email: andrew.friedman@usdoj.gov  
 jessica.manca@usdoj.gov  
 tania.culbertson@usdoj.gov